IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4689 OF 2005

Vithal Sadashiv Shinde .. Petitioner

Vs.

Apana Sahakari Bank Ltd. and ors. .. Respondents

Mr. V.S. Kapse for petitioner.
Ms. Pooja Gaonkar h/f Mr. P.M. Gaonkar for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : July 10, 2006.

P.C.:

1. Heard Mr. Kapse the learned counsel for the petitioner.

2. The Dispute No.168 of 1995 was decided and award came to be passed on 30/9/1996. The petitioner was the party to the said dispute. He approached the said Cooperative Court by Misc. Application No.32 of 2004 filed for the first time on or about 20/4/2004 and prayed for setting aside the ex parte award dated 30/9/1996. After hearing both the parties the learned Judge of the Cooperative Court rejected the said application on 3/2/2005. The petitioner, therefore, approached the Maharashtra State Cooperative Appellate Court at Mumbai by Appeal No.16 of 2005 and the

learned President of the Appellate Court was pleased to dismiss the said appeal on 22/6/2005 and hence this petition under Article 227 of the Constitution.

3. As per the petitioner the notice in Dispute No.168 of 1995 was served in the same year but on his wife and, therefore, he could not take steps to contest the said dispute so far as his liability was concerned. The petitioner does not dispute that he was a guarantor to the loan sanctioned by the present respondent-Bank. After the award was passed the Special Recovery Officer had taken out proceedings and a demand notice in respect of the same proceedings was served on the petitioner on 11/11/1998. In addition, the Insolvency Proceedings were also taken out and notice in the said proceedings was also served on the petitioner on 2/12/2003. Inspite of all these notices, the petitioner applied on 20/4/2004 for setting aside ex parte award and prayed that there was a delay of 139 days which deserved to be condoned. He had taken the plea of his sickness and more particularly that he was suffering from jaundice.

4. The courts below have noted that about the

sickness no evidence was adduced or placed on record. Inspite of the fact that the Special Recovery Officer's notice was served in 1998, the petitioner waited for the Insolvency Proceedings and the notice thereon to be served on 2/12/2003 and thereafter he approached belatedly for setting aside an ex parte award which was passed about eight years before. The courts below have concurrently held that the petitioner failed to make out good and sufficient cause for condoning the delay. In fact, the petitioner was recklessly negligent in contesting the dispute proceedings and by way of an after thought he proceeded to apply for setting aside the award passed by the Cooperative Court.

5. No interference is called for in the impugned orders passed by the courts below and hence the petition is rejected summarily. Interim order stands vacated.

(B.H. Marlapalle,J.)